

ORIGINAL

asm

KOBAYASHI, SUGITA & GODA

LEX R. SMITH 3485-0
THOMAS H. YEE 7344-0
First Hawaiian Center
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813
Telephone No.: (808) 539-8700
Facsimile No.: (808) 539-8799
Email: lrs@ksqlaw.com

UNITED

4E
DISTRICT COURT

DISTRICT COURT HAWAII

9 MAR 2 2006
at 9 o'clock and 9 min. 9 M
SUE BEITIA, CLERK



KIRKLAND & ELLIS LLP

MICHAEL E. BAUMANN (CA Bar No. 145830)
DAMIAN D. CAPOZZOLA (CA Bar No. 186412)
R. OLIVIA SAMAD (CA Bar No. 228611)
777 Sough Figueroa Street
Los Angeles, CA 90017
Telephone No.: (213) 680-8400
Facsimile No.: (213) 680-8500
Email: mbaumann@kirkland.com

Attorneys for Defendant
POST-CONFIRMATION TRUST

LYLE S. HOSODA & ASSOCIATES, LLC

LYLE S. HOSODA 3964-0
RAINA P.B. MEAD 7329-0
345 Queen Street, Suite 804
Honolulu, Hawaii 96813
Telephone: (808) 524-3700
Facsimile: (808) 524-3838
E-mail: lsh@hosodalaw.com

Attorneys for Defendants
MARK DILLON, TERESA NOA, MELVIN PONCE,
SONIA PURDY, JUSTIN FUKUMOTO,
ALFREDDA WAIOLAMA, and JACQUELINE RIO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,) CIVIL NO. CV03-00385 SOM-LEK
Plaintiff,) (Copyright)
v.) DEFENDANTS' JOINT MOTION FOR
HAWAIIAN EXPRESS SERVICE,) JUDGMENT AS A MATTER OF LAW AS
INC., a California) TO ACTUAL DAMAGES AND
corporation; et al.,) VICARIOUS INFRINGEMENT;
Defendants.) MEMORANDUM IN SUPPORT OF
MOTION; CERTIFICATE OF SERVICE
Trial: February 28, 2006
Judge: Hon. Susan Oki
Mollway

**DEFENDANTS' JOINT MOTION FOR JUDGMENT AS A MATTER OF LAW
AS TO ACTUAL DAMAGES AND VICARIOUS INFRINGEMENT**

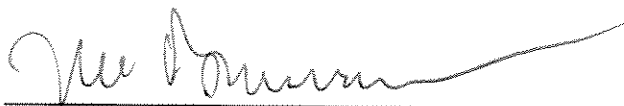
Defendants POST CONFIRMATION TRUST, MARK DILLON, TERESA NOA, MELVIN PONCE, SONIA PURDY, JUSTIN FUKUMOTO, ALFREDDA WAIOLAMA, and JACQUELINE RIO, (collectively "Defendants") by and through their respective attorneys, hereby move this Court for judgment as a matter of law that the actual damages for the Employees and vicarious damages for Fleming are zero.

This motion is made pursuant to Rule 50(a) of the Federal Rules of Civil Procedure and is based upon the attached

memorandum in support of motion, the testimony and evidence presented at trial beginning on February 28, 2006, and the entire records and files herein.

DATED: Honolulu, Hawaii, March 2, 2006.

KOBAYASHI SUGITA & GODA



LEX R. SMITH
THOMAS H. YEE

KIRKLAND & ELLIS LLP

MICHAEL BAUMANN
DAMIAN D. CAPOZZOLA
R. OLIVIA SAMAD

Attorneys for Defendant
POST-CONFIRMATION TRUST

LYLE S. HOSODA & ASSOCIATES, LLC



LYLE S. HOSODA
RAINA P.B. MEAD

Attorneys for Defendants
MARK DILLON, TERESA NOA,
MELVIN PONCE, SONIA PURDY,
JUSTIN FUKUMOTO, ALFREDDA
WAIOLAMA, and JACQUELINE RIO